

THIRD DIVISION

[G.R. No. 217529, July 03, 2019]

DIGITEL EMPLOYEES UNION, PETITIONER, VS. DIGITAL TELECOMS PHILIPPINES, INC., RESPONDENT.

DECISION

REYES, A., JR., J.:

This is a petition for review^[1] under Rule 45 of the Revised Rules of Court dated April 21, 2015. The petition assails the Resolutions dated January 26, 2015^[2] and March 11, 2015^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 137645, which declared Digitel Employees Union (DEU)'s petition for *certiorari* abandoned and dismissed.

The Facts

The present petition is a continuation of the protracted collective bargaining dispute within Digital Telecommunications Philippines, Inc. (DIGITEL), which has previously come before this Court in 2012.^[4] To properly contextualize this petition, the Court hereby quotes from the aforementioned decision in G.R. Nos. 184903-04, dated October 10, 2012, *viz.*:

By virtue of a certification election, [DEU] became the exclusive bargaining agent of all rank and file employees of [DIGITEL] in 1994. [DEU] and [DIGITEL] then commenced collective bargaining negotiations which resulted in a bargaining deadlock. [DEU] threatened to go on strike, but then Acting Labor Secretary Bienvenido E. Laguesma assumed jurisdiction over the dispute and eventually directed the parties to execute a CBA.

However, no CBA was forged between [DIGITEL] and [DEU]. Some [DEU] members abandoned their employment with [DIGITEL]. [DEU] later became dormant.

Ten (10) years thereafter or on 28 September 2004, [DIGITEL] received from Arceo Rafael A. Esplana (Esplana), who identified himself as President of [DEU], a letter containing the list of officers, CBA proposals and ground rules. The officers were respondents Esplana, Alan D. Licando (Vice-President), Felicito C. Romero, Jr. (Secretary), Arnold D. Gonzales (Treasurer), Reynel Francisco B. Garcia (Auditor), Zosimo B. Peralta (PRO), Regino T. Unidad (Sgt. at Arms), and Jim L. Javier (Sgt. at Arms).

[DIGITEL] was reluctant to negotiate with [DEU] and demanded that the latter show compliance with the provisions of [DEU]'s Constitution and By-laws on union membership and election of officers.

On 4 November 2004, Esplana and his group filed a case for Preventive Mediation before the National Conciliation and Mediation Board based on [DIGITEL]'s violation of the duty to bargain. On 25 November 2004, Esplana filed a notice of strike.

On 10 March 2005, then Labor Secretary Patricia A. Sto. Tomas issued an Order assuming jurisdiction over the labor dispute.

During the pendency of the controversy, Digitel Service, Inc. (Digiserv), a non-profit enterprise engaged in call center servicing, filed with the Department of Labor and Employment (DOLE) an Establishment Termination Report stating that it will cease its business operation. The closure affected at least 100 employees, 42 of whom are members of [DEU].

Alleging that the affected employees are its members and in reaction to Digiserv's action, Esplana and his group filed another Notice of Strike for union busting, illegal lock-out, and violation of the assumption order.

On 23 May 2005, the Secretary of Labor ordered the second notice of strike subsumed by the previous Assumption Order.

Meanwhile, on 14 March 2005, [DIGITEL] filed a petition with the Bureau of Labor Relations (BLR) seeking cancellation of [DEU]'s registration on the following grounds: 1) failure to file the required reports from 1994-2004; 2) misrepresentation of its alleged officers; 3) membership of [DEU] is composed of rank and file, supervisory and managerial employees; and 4) substantial number of [DEU] members are not [DIGITEL] employees.

In a Decision dated 11 May 2005, the Regional Director of the DOLE dismissed the petition for cancellation of union registration for lack of merit. The Regional Director ruled that it does not have jurisdiction over the issue of non-compliance with the reportorial requirements. He also held that [DIGITEL] failed to adduce substantial evidence to prove misrepresentation and the mixing of non-[DIGITEL] employees with [DEU]. Finally, he declared that the inclusion of supervisory and managerial employees with the rank and file employees is no longer a ground for cancellation of [DEU]'s certificate of registration.

The appeal filed by [DIGITEL] with the BLR was eventually dismissed for lack of merit in a Resolution dated 9 March 2007, thereby affirming the 11 May 2005 Decision of the Regional Director.

CA-G.R.SP No. 91719

In an Order dated 13 July 2005, the Secretary of Labor directed [DIGITEL] to commence the CBA negotiation with [DEU]. Thus:

WHEREFORE, all the foregoing premises considered, this
Office hereby orders:

1. DIGITEL to commence collective bargaining negotiation with DEU without further delay; and
2. The issue of unfair labor practice, consisting of union-busting, illegal termination/lockout and violation of the assumption of jurisdiction, specifically the return-to-work aspect of the 10 March 2005 and 03 June 2005 orders, be CERTIFIED for compulsory arbitration to the NLRC.

[DIGITEL] moved for reconsideration on the contention that the pendency of the petition for cancellation of [DEU]'s certificate of registration is a prejudicial question that should first be settled before the DOLE could order the parties to bargain collectively. On 19 August 2005, then Acting Secretary Manuel G. Imson of DOLE denied the motion for reconsideration, affirmed the 13 July 2005 Order and reiterated the order directing parties to commence collective bargaining negotiations.

On 14 October 2005, [DIGITEL] filed a petition, docketed as CA-G.R. SP No. 91719, before the [CA] assailing the 13 July and 19 August 2005 Orders of the DOLE Secretary and attributing grave abuse of discretion on the part of the DOLE Secretary for ordering [DIGITEL] to commence bargaining negotiations with [DEU] despite the pendency of the issue of union legitimacy.

CA-G.R. SP No. 94825

In accordance with the 13 July 2005 Order of the Secretary of Labor, the unfair labor practice issue was certified for compulsory arbitration before the NLRC, which, on 31 January 2006, rendered a Decision dismissing the unfair labor practice charge against [DIGITEL] but declaring the dismissal of the 13 employees of Digiserv as illegal and ordering their reinstatement. [DEU] manifested that out of 42 employees, only 13 remained, as most had already accepted separation pay. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the charge of unfair labor practice is hereby DISMISSED for lack of merit. However, the dismissal of the remaining thirteen (13) affected employees is hereby declared illegal and DIGITEL is hereby ORDERED to reinstate them to their former position with full backwages up to the time they are reinstated, computed as follows:

x x x x

Upon motion for reconsideration filed by [DIGITEL], four (4) affected employees, namely Ma. Loreta Eser, Mantes Jereza, Leonore Tuliao and Aline G. Quillopras, were removed from entitlement to the awards pursuant to the deed of quitclaim and release which they all signed.

In view of this unfavorable decision, [DIGITEL] filed another petition on 9 June 2006 in CA-G.R. SP No. 94825 before the Court of Appeals, challenging the above NLRC Decision and Resolution and arguing mainly

that Digiserv employees are not employees of [DIGITEL].

Ruling of the [CA]

On 18 June 2008, the Tenth Division of the [CA] consolidated the two petitions in CA-G.R. SP No. 91719 and CA-G.R. SP No. 94825, and disposed as follows:

WHEREFORE, the petition in CA-G.R. SP No. 91719 is **DISMISSED**. The July 13, 2005 **Order** and the August 19, 2005 Resolution of the DOLE Secretary are **AFFIRMED in toto**. With costs.

The petition in CA-G.R. SP No. 94825 is partially **GRANTED**, with the effect that the assailed dispositions must be **MODIFIED**, as follows:

1) In addition to the order directing reinstatement and payment of full backwages to the nine (9) affected employees. Digital Telecommunications Philippines, Inc. is furthered **ORDERED**, should reinstatement is no longer feasible, to pay separation pay equivalent to one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher.

2) The one hundred thousand (PhP 100,000.00) peso-fine imposed on Digital Telecommunications Philippines, Inc. is **DELETED**. No costs.

The [CA] upheld the Secretary of Labor's Order for [DIGITEL] to commence CBA negotiations with [DEU] and emphasized that the pendency of a petition for the cancellation of a union's registration does not bar the holding of negotiations for a CBA. The [CA] sustained the finding that Digiserv is engaged in labor-only contracting and that its employees are actually employees of [DIGITEL].

[DIGITEL] filed a motion for reconsideration but was denied in a Resolution dated 9 October 2008.

Hence, this petition for review on *certiorari*.

x x x x

WHEREFORE, the Petition is **DENIED**. The Decision of the [CA] in CA-G.R. SP No. 91719 is **AFFIRMED**, while the Decision in CA-G.R. SP No. 94825 declaring the dismissal of affected union member-employees as illegal is **MODIFIED** to include the payment of moral and exemplary damages in amount of P10,000.00 and P5,000.00, respectively, to each of the thirteen (13) illegally dismissed union-member employees.

Petitioner [DIGITEL] is **ORDERED** to pay the affected employees backwages and separation pay equivalent to one (1) month salary, or one-half (1/2) month pay for every year of service, whichever is higher.

Let this case be **REMANDED** to the Labor Arbiter for the computation of monetary claims due to the affected employees.

SO ORDERED.^[5] (Citations omitted and emphases in the original)

Redundancy declaration and termination of DIGITEL employees

In a Resolution dated January 21, 2013, the Court affirmed its decision in G.R. Nos. 184903-04. On January 28, 2013, DIGITEL announced that it was terminating all of its employees on the ground of redundancy arising from the acquisition by the Philippine Long Distance Telephone Company (PLDT) of DIGITEL's telecommunications network. In response, on February 7, 2013, DEU filed a Request for Preventive Mediation with the National Conciliation and Mediation Board (NCMB). DEU also filed with the Secretary of Labor and Employment (SOLE) an Urgent Motion to Prevent/Suspend PLDT/DIGITEL's Mass Termination, dated February 19, 2013. On February 22, 2013, DIGITEL filed its Opposition and Comment *Ad Cautelam* to DEU's February 19, 2013 motion, arguing in the main that the SOLE has no jurisdiction over the termination dispute because the SOLE's previous Assumption of Jurisdiction only covers the DIGITEL-DEU collective bargaining dispute; and because the redundancy program is legal and made in *bona fide*.^[6]

On March 13, 2013, DEU moved for a writ of execution to compel DIGITEL to commence collective bargaining agreement (CBA) negotiations with DEU. Meanwhile, the termination of DIGITEL's employees took effect on the same day that the Court's decision in G.R. Nos. 184903-04 became final and executory: March 15, 2013. It is alleged that most of DIGITEL's rank-and-file employees accepted DIGITEL's redundancy benefit package^[7] and were re-hired as PLDT contractuels working on DIGITEL's network and performing essentially the same functions they had as regular employees of DIGITEL.^[8] 86 DEU members refused to be re-hired as PLDT contractuels.^[9]

On March 19, 2013, SOLE Rosalinda Dimapilis-Baldoz (Baldoz) granted DEU's motion for execution. In response, DIGITEL filed a Manifestation on March 26, 2013 stating that it can no longer initiate CBA negotiations because all of the employees in the bargaining unit represented by DEU, *i.e.*, the rank-and-file employees of DIGITEL, have been terminated as of March 15, 2013.^[10]

After conciliation proceedings, on May 27, 2013, DIGITEL and DEU made a preliminary agreement to lift DEU's picket on the PLDT main office and to allow 88 former DIGITEL workers to apply for jobs with PLDT. However, DIGITEL alleged that PLDT was forced to back out of its commitment to interview the former DIGITEL workers because on June 11, 2013, DEU members joined by militant elements staged lightning pickets in PLDT facilities in San Fernando, Pampanga and Cebu City.^[11]

On July 17, 2013, DEU filed a Manifestation and Motion praying for the suspension of the termination of the DIGITEL workers, the implementation of the Court's decision in G.R. Nos. 184903-04, and the reinstatement of DIGITEL workers in the payroll pending the implementation of the aforementioned decision.^[12] On July 24, 2013, DIGITEL filed its Manifestation and Motion praying that the SOLE resolve